IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION No. 2342 of 2006

PRAVEEN BUDHAMAL SANCHETI ... Petitioner
V/S
NASHIK MUNICIPAL CORPORATION
OF CITY OF NASHIK AND ORS. . .. Respondents

Mr. R.A. Thorat for petitioner
Ms. R. V. More for respondents.

CORAM: S. B. MHASE J.
DATE:20/04/2006

P.C.:

Heard both sides.

1. Regular Civil Suit No. 402 of 2005 has been filed by the petitioner in the Court of Civil Judge, Senior Division, Nasik, seeking a declaration that the petitioner herein has carried out the repairs of the suit property in consonance with the order of the defendant – respondent dated 21.6.2005 bearing Javak Kramank Narbi/ vahi/ 968/2005 and further that the order of the respondent cancelling the said permission be declared as illegal and for consequential reliefs. In the said suit, application at Exhibit 5 was filed seeking temporary injunction under Order 39 to the effect that the respondent Corporation shall not take any action to demolish the building. The said application was rejected by the 2nd Joint

Civil Judge, Senior Division, Nasik on 9.1.2006. Being aggrieved by the said order Civil Misc. Appeal No. 9 of 2006 was filed before the District Judge, Nasik which was disposed of by the 4th Ad hoc Additional Distict Judge, Nashik, by judgment dated 8.3.2006. These orders are assailed by filing this petition.

2. Both sides counsel addressed the court for a pretty long time. Ultimately the learned counsel for the petitioner on instructions from the petitioner, who is present in the court, made the following statement:

"That the petitioner be allowed to withdraw this petition and also the original suit being Regular Civil Suit No. 402 of 2005, with liberty to approach the Commissioner and / or the respondent or the Nasik Municipal Corporation, for regularization of the construction, already carried out by the petitioner and till this proposal for regularization is under consideration the respondents shall not take any action for demolition, so also in case the regularization proposal is decided adverse to the interest of the petitioner, the said demolition shall not be carried out by the Corporation for a further period of two weeks, from the date of the communication of the order to the petitioner so that the petitioner can avail a proper remedy as against the said order."

3. Learned counsel Mr. More who appears for the respondent makes a statement that he has no objection for allowing the withdrawal of the petition and the suit and that the Corporation and / or the Commissioner will consider the application made by the petitioner for regularization in accordance with the law, after hearing the petitioner. He also states that the action of demolition will not be taken as against the petitioner during the pendency of the consideration of the regularization proposal and in case it is decided adverse to the interest of the petitioner, for a further period of two weeks, from the date of the communication of the order to the petitioner. In view of these statements – undertakings made by both side counsel, the petition is disposed of with the following order:

4. The undertakings given by the respective parties are accepted. Leave to withdraw this petition is hereby granted. The petitioner shall file application for withdrawal of the suit with liberty as stated above before the Civil Judge, Senior Division, Nasik. Both these withdrawals are permitted since liberty is granted to the petitioner to approach the Commissioner and / or the Corporation for making a proposal for regularization of the building, which is the subject matter of the suit. The application for regularization shall be submitted by the petitioner within three weeks from the date of this order. However, it is made clear that prior to

the proposal being submitted the suit must be withdrawn. If the proposal is submitted within a period of 3 weeks as stated above for regularization of the construction work the said proposal shall be considered by the respondent and / or the Commissioner of the respondent, in accordance with the law, after giving an opportunity of hearing to the petitioner within a further period of 4 weeks. During this period the action for demolition will not be carried out by the respondent. In case the proposal is decided adverse to the interest of the petitioner, the respondent – Corporation shall not take any action for demolition for a further period of two weeks, from the date of the communication of the said order to the petitioner, by Registered post with acknowledge due. With these directions this petition is disposed of.

Parties to act upon the authenticated copy of this order.

(S. B. MHASE J.)